

Congress of the United States  
Washington, DC 20515

November 13, 2013

The Honorable Gina McCarthy  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator McCarthy,

As members of the Senate and Congressional Western Caucuses, we are contacting you regarding our opposition to the Environmental Protection Agency's (EPA) efforts to significantly expand federal regulatory authority under the Clean Water Act.

As you know, the EPA has sent a draft rule to the Office of Management and Budget (OMB) regarding the definition of "the waters of the United States" under the Clean Water Act. Based on EPA's draft scientific report, "Connectivity of Streams and Wetlands to Downstream Waters," and the agency's commitment to rely on this report during the rulemaking process, we are concerned that EPA's final rule may in effect expand federal jurisdiction over all wet areas of a state. This is despite Congress's limiting of the EPA's and the Army Corps of Engineers' authority under the CWA, as the Supreme Court has consistently recognized.

EPA has indicted the following regarding the so-called Connectivity Report:

*"This report, when finalized, will provide a scientific basis needed to clarify Clean Water Act jurisdiction, including a description of the factors that influence connectivity and the mechanisms by which connected waters affect downstream waters. Any final regulatory action related to the jurisdiction of the Clean Water Act in a rulemaking will be based on the final version of this scientific assessment, which will reflect EPA's consideration of all comments received from the public and the independent peer review."*

If EPA believes that the law should be changed based on new scientific research, we would welcome you sending any proposals to Congress for our consideration. Issuing reports and using them to potentially change a law duly passed by Congress would invite legitimate legal challenges and further erode the public's confidence in our Constitutional system of checks and balances.

As you may be aware, there has been strong opposition to past efforts to have the federal government control all wet areas of the states. Most recently during consideration of the Water Resources Development Act (WRDA), a bipartisan group of Senators voted 52 to 44 to reject the EPA's Clean Water Act Jurisdiction Guidance which would have also resulted in effectively unlimited jurisdiction over intrastate water bodies. Efforts to pass legislation to have the federal government control all non-navigable waters have also failed in past Congresses.

Strong opposition to EPA's approach is based on the devastating economic impacts that a federal takeover of state waters would have. Additional regulatory costs associated with changes in jurisdiction and increases in permits will erect bureaucratic barriers to economic growth, negatively impacting farms, small businesses, commercial development, road construction and energy production, to name a few. In addition, expanding federal control over intrastate waters will substantially interfere with the ability of individual landowners to use their property.

We urge you to change course and to commit to operating under the limits established by Congress, even if those limits are impermissibly overlooked in the so-called Connectivity Report. We ask that you work with Congress to address these issues keeping in mind the need to provide clean water for our environment and communities, while also acknowledging the important role states play as a partner in achieving these goals. We also ask that you consider the economic impacts of your policies knowing that your actions will have serious impacts on struggling families, seniors, low income households and small business owners.

Sincerely,

John Lauraso

Steven Pearce

D. A. Hill

Gynthia M. Lummis

Michael B. Enzi

Adrianne Benney

Mike Crayon

Tommy Hansen

Pat McCrory

K. Michael Conroy

John Cornyn Mike Spivey

John McCain Doug Walden

Ray Bennett Kevin Cramer

John Boozman Scott R. Lipton

Tim Flaherty David Dew

Deb Fischer Paul A. Gosar

Randy Neumann <sup>TX-19</sup> Tom Stacey

Tom Hill Adrian Smith

Joe & Rich Mike Johnson

James Mc. Gough Quinn Hatch



# UNITED STATES SENATOR JOHN BARRASSO

307 Dirksen Senate Office Building, Washington, D.C. 20510

## FACSIMILE TRANSMISSION

To: *EPA Congressional Liaison*

Fax number:

*202-501-1519*

From:

*Brian Clifford, Sen. Barrasso's Office*  
*202-224-0800*

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office of Senator John Barrasso at (202) 224-6441